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ON PETITION

In re Application of
Contadini
Application No. 10/686,312
Filed: October 15, 2003
Attorney Docket No. 24044-205B
FOR: DEVICE WITH ONE OR MORE
INDICATORS

This is a decision on the petition entitled, "PETITION UNDER 37 CFR 1.181 AND FEE AUTHORIZATION," filed July 23, 2004 (certificate of mailing date July 21, 2004). Petitioner requests (1) that a 5 month extension of time fee be waived because a January 13, 2004 Notice to File Missing Parts of Application, dated January 13, 2004, was not timely received at the correspondence address of record and (2) that Figure 3, allegedly omitted upon the filing of the application, be accorded a filing date of October 15, 2003. The petition will be treated under 37 CFR 1.182 for the request to waive the extension of time fee and under 37 CFR 1.53(e) for the request that Office acknowledge Figure 3 was filed on October 15, 2003 with the other application papers.

The petition under 37 CFR 1.182 is **GRANTED**.

The petition under 37 CFR 1.53(e) is **DISMISSED AS MOOT**.

A Notice to File Missing Parts of Nonprovisional Application was allegedly mailed on January 13, 2004. Petitioner asserts that this Notice was never received at the correspondence address of record and provides detailed statements from Paralegal Linda M. Freed and Secretary Florence S. Chamoures regarding the treatment of incoming USPTO mail. As evidenced by the mail logs covering January 14- 30, it is apparent that the January 13, 2004 Notice was not received at the correspondence address of record. While the docketing records have not been submitted, Ms. Freed explains that if an item is not on the mail log, then it would not be docketed. Ordinarily a docketing report is required to show non-receipt. However, in this instance, a review of USPTO PALM records shows no USPTO mailing entry for the January 13, 2004 Notice. This fact further bolsters petitioner's arguments of non-receipt. It appears that the January 13, 2004 Notice was generated, but never mailed.

Since petitioner did not receive the January 13, 2004 Notice until July 14, 2004, when petitioner took the initiative to check on the status of the case, it would not be equitable to charge petitioner a large extension of time fee. The petition under 37 CFR 1.182 is **GRANTED**.

The January 13, 2004 Notice states that Figure 3 described in the specification appears to have been omitted. Petitioner asserts that Figure 3 was filed on October 15, 2003. A review of petitioner's evidence is not required because an independent review of the application papers filed on October 15, 2003 reveals that Figure 3 is, in fact, present. The January 13, 2004 Notice was incorrect to allege Figure 3 was omitted upon the application's filing. The petition under 37 CFR 1.53(e) is **DISMISSED AS MOOT** because Figure 3 is present.

No petition fees should be charged in connection with this matter. Deposit account no. 50-0447 will be credited the \$130.00 petition fee charged on July 26, 2004. Deposit account no. 50-0447 will be charged a \$65.00 surcharge for the late filing of the executed declaration.

The application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712. After September 27, 2004, please call (571) 272-3230.



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